

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NICHOLAS KALLIOPE
Plaintiff,

v.

HOME DEPOT USA, INC.
Defendant.

05 10814 RGS

CIVIL ACTION NO. 05-10814 # 63935

AMOUNT \$ 250.00

SUMMONS ISSUED NA

LOCAL RULE 4.1 -

WAIVER FORM -

MCF ISSUED -

BY DPTY. CLK. M.F.

DATE 4/22/05

MAGISTRATE JUDGE RBC

NOTICE OF REMOVAL

TO: THE CHIEF JUDGE AND JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS

NOW COMES Home Depot USA, Inc., ("Home Depot") and files this Notice of Removal of the above-captioned action from Middlesex Superior Court, Middlesex County, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts. In support of its Notice of Removal, Home Depot states as follows:

1. This is a negligence action brought by Nicholas Kalliope, who alleges personal injury resulting from a trip and fall on rope on the floor of the Watertown, Massachusetts Home Depot store. As a result of Home Depot's alleged negligence, the plaintiff claims that he sustained severe and permanent injuries, has incurred and expects to continue to incur medical expenses and lost wages, and has suffered and expects to continue to suffer great pain of body and mind. (See Exhibit "A," attached, Plaintiff's Complaint and Civil Action Cover Sheet.)
3. The plaintiff is a resident of Belmont, Massachusetts.
4. Home Depot USA, Inc. is a Delaware Corporation with a principal place of business in Georgia.
5. Jurisdiction is founded on diversity of citizenship between the parties pursuant to 28 U.S.C. § 1332.

6. The plaintiff alleges that he sustained a comminuted patella fracture and has incurred medical expenses to date of \$47,853.74 and expects that amount to increase with future treatment. Therefore, Home Depot believes that the amount in controversy, given the plaintiff's alleged damages, reasonably can be expected to \$75,000.

7. This Notice of Removal is being filed within the time period required by 28 U.S.C. § 1446(b).

8. This Notice of Removal was served on counsel of record via regular mail on April 22, 2005

Wherefore, Home Depot prays for removal of the above-captioned matter from Middlesex Superior Court, Middlesex County, to the United States District Court for the District of Massachusetts.

Dated: April 22, 2005

HOME DEPOT USA, INC.
By Its Attorneys,
CAMPBELL CAMPBELL EDWARDS & CONROY
PROFESSIONAL CORPORATION

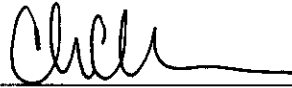


James M. Campbell, BBO # 541882
Christopher A. Callanan, BBO # 630649
Julie B. Goldman, BBO# BBO# 648489
One Constitution Plaza
Boston, MA 02129
617-241-3000

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the following attorney of record by mail on April 22, 2005.

J. Michael Conley
Kenney & Conley
100 Grandview Road
Braintree, MA 02184

A handwritten signature in black ink, appearing to read 'Callanan', written over a horizontal line.

Christopher A. Callanan

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Nicholas Kalliope v. Home Depot USA, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

05 10814 RGS3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒Central Division ☐Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME James M. Campbell, Christopher A. Callanan, Julie B. GoldmanADDRESS Campbell Campbell Edwards & Conroy, One Constitution Plaza, Boston, MA 02129TELEPHONE NO. (617) 241-3000

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

KALLIOPE NICHOLAS,

Plaintiff,

V.

THE HOME DEPOT, INC.,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

1. The Plaintiff, Kalliope Nicholas, resides at 64 Channing Road, Belmont, Middlesex County, Commonwealth of Massachusetts.

2. The Defendant, The Home Depot, Inc., is a duly constituted corporation with places of business throughout Eastern Massachusetts, including at a store in Watertown, Massachusetts.

3. On June 13, 2004, the Plaintiff, a customer of the Defendant, tripped and fell over rope on the Defendant's store floor. The Plaintiff's fall was caused by the Defendant's negligence in:

- (a) unsafe placement of rope on its store floor;
- (b) failure to remedy dangerous conditions created by the rope left on its store floor;
- (c) failure to guard or block the hazardous condition represented by the rope left on its store floor;

CIVIL ACTION COVER SHEET		DOCKET NO.(S)	Trial Court of Massachusetts Superior Court Department County: <u>MIDDLESEX</u>	
PLAINTIFF(S) KALLIOPE NICHOLAS		DEFENDANT(S) THE HOME DEPOT, INC.		
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE J. Michael Conley, Esq. (BB0# 094090) Kenney & Conley, P.C. 100 Grandview Road, Braintree, MA 02184 Board of Bar Overseers number: Tel: 781-848-9891		ATTORNEY (if known)		
Origin code and track designation				
Place an x in one box only:				
<input checked="" type="checkbox"/> 1. F01 Original Complaint	<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 & 104 (After trial) (X)			
<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)	<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)			
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)	<input type="checkbox"/> 6. E10 Summary Process Appeal (X)			
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)				
CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?	
B04	Other negligence-- personal injury	(F)	(X) Yes	() No
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.				
TORT CLAIMS (Attach additional sheets as necessary)				
A. Documented medical expenses to date:				
1. Total hospital expenses				\$ 3,876.62
2. Total Doctor expenses				\$ 2,034.00
3. Total chiropractic expenses				\$
4. Total physical therapy expenses	rehabilitation			\$ 34,057.00
5. Total other expenses (describe)	ambulance, medical equipment, home care			\$ 7,886.12
				Subtotal \$ 47,853.74
B. Documented lost wages and compensation to date				
C. Documented property damages to date				
D. Reasonably anticipated future medical and hospital expenses				
E. Reasonably anticipated lost wages				
F. Other documented items of damages (describe)				
\$				
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)				
Comminuted patella fracture				
TO EXCEED \$				
TOTAL \$ 47,853.74				
CONTRACT CLAIMS (Attach additional sheets as necessary)				
Provide a detailed description of claim(s):				
TOTAL \$				
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT				
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."				
Signature of Attorney of Record <u>[Signature]</u>				DATE: <u>3/22/2005</u>

4/22/05
M.P.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
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- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME James M. Campbell, Christopher A. Callanan, Julie B. Goldman

ADDRESS Campbell Campbell Edwards & Conroy, One Constitution Plaza, Boston, MA 02129

TELEPHONE NO. (617) 241-3000

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Nicholas Kalliope

(b) County of Residence of First Listed Plaintiff Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

J. Michael Conley, Kenney & Conley, 100 Grandview Road,
Braintree, MA 02184, (781) 848-9891

DEFENDANTS

Home Depot USA, Inc.

County of Residence of First Listed Defendant Atlanta, Georgia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) James A. Campbell, Chris A. Callanan
Julie B. Goldman, Campbell Campbell Edwards & Conroy, One
Constitution Plaza, Boston, MA 02129, (617) 241-3000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 PTF ☐ 1 DEF ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF ☐ 4
- Citizen of Another State ☐ 2 PTF ☐ 2 DEF ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF ☐ 3 Foreign Nation ☐ 6 PTF ☐ 6 DEF ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

- | | | | | | |
|--|---|--|--|---|--|
| <input type="checkbox"/> 110 Insurance
<input type="checkbox"/> 120 Marine
<input type="checkbox"/> 130 Miller Act
<input type="checkbox"/> 140 Negotiable Instrument
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment
<input type="checkbox"/> 151 Medicare Act
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits
<input type="checkbox"/> 160 Stockholders' Suits
<input type="checkbox"/> 190 Other Contract
<input type="checkbox"/> 195 Contract Product Liability
<input type="checkbox"/> 196 Franchise | PERSONAL INJURY
<input type="checkbox"/> 310 Airplane
<input type="checkbox"/> 315 Airplane Product Liability
<input type="checkbox"/> 320 Assault, Libel & Slander
<input type="checkbox"/> 330 Federal Employers' Liability
<input type="checkbox"/> 340 Marine
<input type="checkbox"/> 345 Marine Product Liability
<input type="checkbox"/> 350 Motor Vehicle
<input type="checkbox"/> 355 Motor Vehicle Product Liability
<input checked="" type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY
<input type="checkbox"/> 362 Personal Injury - Med. Malpractice
<input type="checkbox"/> 365 Personal Injury - Product Liability
<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
<input type="checkbox"/> 370 Other Fraud
<input type="checkbox"/> 371 Truth in Lending
<input type="checkbox"/> 380 Other Personal Property Damage
<input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture
<input type="checkbox"/> 620 Other Food & Drug
<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881
<input type="checkbox"/> 630 Liquor Laws
<input type="checkbox"/> 640 R.R. & Truck
<input type="checkbox"/> 650 Airline Regs.
<input type="checkbox"/> 660 Occupational Safety/Health
<input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158
<input type="checkbox"/> 423 Withdrawal 28 USC 157
<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 840 Trademark | <input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 950 Constitutionality of State Statutes |
| <input type="checkbox"/> 210 Land Condemnation
<input type="checkbox"/> 220 Foreclosure
<input type="checkbox"/> 230 Rent Lease & Ejectment
<input type="checkbox"/> 240 Torts to Land
<input type="checkbox"/> 245 Tort Product Liability
<input type="checkbox"/> 290 All Other Real Property | <input type="checkbox"/> 441 Voting
<input type="checkbox"/> 442 Employment
<input type="checkbox"/> 443 Housing/Accommodations
<input type="checkbox"/> 444 Welfare
<input type="checkbox"/> 445 Amer. w/Disabilities - Employment
<input type="checkbox"/> 446 Amer. w/Disabilities - Other
<input type="checkbox"/> 440 Other Civil Rights | <input type="checkbox"/> 510 Motions to Vacate Sentence
Habeas Corpus:
<input type="checkbox"/> 530 General
<input type="checkbox"/> 535 Death Penalty
<input type="checkbox"/> 540 Mandamus & Other
<input type="checkbox"/> 550 Civil Rights
<input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

The plaintiff alleges that he tripped and fell

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE